

Meeting Date: 4-25-06

Santa Clara



# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5 E.2



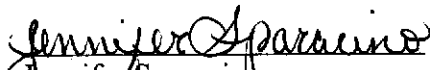
**DATE:** April 20, 2006

**TO:** Mayor and Council for Information

**FROM:** City Manager

**SUBJECT:** Comments Made by Fire Chief and Chief of Police at the Council Meeting of April 11, 2006 regarding Firefighters' Union and Police Officers' Association's Request to Place Binding Arbitration on the November 2006 Ballot

The City has received a request from some citizens and employees for copies of the April 11, 2006 remarks made by the Fire Chief and by the Chief of Police in response to the Firefighters Union and Police Officers Association's request to place binding arbitration on the November 2006 ballot. Attached are their remarks.

  
Jennifer Sparacino  
City Manager

*Documents Related to this Report: Remarks of Fire Chief and of Chief of Police made at the April 11, 2006 City Council meeting.*

Fire Chief Phil Kleinheinz

City Council meeting April 11, 2006, re: Binding Arbitration

Binding arbitration, on face value, takes on the appearance of being a good thing because proponents will argue that it improves the negotiation process. A closer examination, however, reveals that arbitration is detrimental to most agencies, both labor and management alike. Binding arbitration and its use in Police and Fire Departments came about in the late 1960s. Since that time, approximately 5% of the cities in California have established binding arbitration as their means of settling disputes.

Binding arbitration does just that; it is a method by which both labor and management can submit their dispute to an outside arbitrator who will then render a decision that is final and binding on both parties. The arbitrator is from outside the jurisdiction and is not held responsible for the impact of his or her decision. Binding arbitration is to settle disputes, not necessarily make things better. Therein lies the problem with binding arbitration.

Binding arbitration is all about compromise and competition. It becomes a crutch and a weapon and is used as an alternative to interest based collaboration. It finds resolution but not necessarily positive solutions.

Negotiations have never been easy and they never will. Labor works hard to improve the wages and benefits for their members and they should. Management works hard to allocate a limited amount of resources in a way that provides the best service level to our citizens, and they should. During negotiations it is not uncommon for one or both sides to become frustrated. Binding arbitration does not make negotiations any easier; it only serves to settle a dispute.

The most positive negotiations are those that involve interest-based collaboration that values win-win solutions. In Santa Clara, both labor and management have worked hard and have been very good at interest-based negotiations for the past three decades. We should all think very carefully whether or not we want to make this permanent change. This is a one-way ticket. If implemented, binding arbitration will be a crutch and a weapon that is available to both labor and management and it will get used even when both sides meet and confer in good faith.

The differences between collaboration and arbitration are self-evident. Collaboration is win-win and arbitration is win-lose. The problem with win-lose scenarios is that when one side loses, both sides lose. Interest based collaborative negotiations value and preserve relationships. Binding arbitration strains relationships and tends to be a one-way ticket to mediocrity.

The labor management relationship in Santa Clara is critically important. That relationship influences the effectiveness and efficiency in our work and most importantly, the level of service that we provide to our citizens.

We are now engaged in a debate over whether or not our past method of working together is better or worse than a newer method, one that uses an outsider to come in and resolve our differences for us. Actually, this debate is not new. Nor is this debate slanted by a labor position or a management position. The debate should be all about what works best for BOTH labor and management.

Binding arbitration is not bad because it favors labor over management, or because it favors management over labor because it does neither. It is bad because it creates a system that makes it easy for either side to walk away from the table.

Our last negotiations were very difficult. They were not difficult though because of those who represented labor or those who represented management. They were difficult because Santa Clara is experiencing unprecedented fiscal challenges. In spite of these challenges, the City of Santa Clara awarded some of the most generous compensation packages that we have ever seen. The total compensation packages from 2001 until 2007, a time of diminishing revenues, were significantly larger than the total compensation packages from 19995 until 2000, a time of increasing revenues.

Many of the labor groups throughout California that sought binding arbitration over the past 25 years did so because they had low pay, low benefits, low morale, poor labor/management relationships and high employee turnover. They were a small percentage of fire departments that wanted higher pay, and there is nothing wrong with that, or they wanted better benefits, and there is nothing wrong with that; or they wanted better employee morale or better labor management relationships and there is definitely nothing wrong with that. In short, those agencies wanted to be like Santa Clara and there is nothing wrong with that. It seems a bit ironic that we would be fighting to be like those departments who want to be like us.

We wrote the book on how to do things right. We have the best employees and the best managers. We have high salaries and excellent benefits. We live and work in a safe community and know that it is a privilege to be a civil servant. We provide a level of service to our citizens that is second to none. We provide that service through a collaborative effort on the part of labor working with management and management working with labor. It isn't always easy, but 30 years of positive partnerships is proof that it works.

A positive partnership is important for many reasons but most of all because the public expects it. Binding arbitration does nothing to build a positive partnership. Take a moment to think about your most important partnership. How would it survive if you and that partner agreed to always work out disagreements in a manner that preserved the integrity of the partnership and respected the interests of both parties? And how about if you agreed that if one of you did not like the way things were going, then that person could call in a disinterested third party to pick one side or the other and whatever was decided by that third person would be binding on the partners. It may help you settle a dispute but it would not do much for the relationship. I would like to suggest that Santa Clara labor and management has a long standing reputation of being excellent partners and as a matter of fact, we are the envy of cities everywhere. It's disappointing to think that just because we have come across difficult budgetary times, we need to look for a different way to deal with each other at the bargaining table.

I would like to conclude by saying that I am not opposed to our union. I am only opposed to their position on this issue. As you have heard me say on many occasions, I am very proud of the men and women who make up Santa Clara Firefighters, Local 1171 and the many positive things that they do for our community.

I have heard it stated by some who support binding arbitration that "we will win because we are right." This is not about who is right and who is wrong nor is it about leveling a playing field. This is about trying to choose a negotiation method that is best for everyone including labor, management and our citizens. It's about selecting between a collaborative system or a competitive system. It's about selecting a system that values win-win or selecting one that prefers win-lose. It's about picking a system that allows our elected officials to speak on behalf of their constituents or preferring a system that gives final authority to someone outside of our City. It's not about labor vs. management or about right vs.

wrong. Regardless of how this comes out in the end, it still boils down to economics. What system will we choose for allocation of our limited resources? The method that I have preferred for over 30 years, regardless of my leadership role, has been the interest based, collaborative method that values partnerships. If we select binding arbitration as our preferred method of resolving differences, then at some point in the future, as has been the case with other cities in California that use this method of dispute resolution, either labor or management will walk away from the bargaining table in frustration and we will enter a new era of working with each other. Both sides will spend a huge amount of money in order for someone to come into our city and pick a side. We will solve the dispute, but one side will walk away a winner and one will walk away a loser and the partnership will take on new meaning. I urged those who favored binding arbitration 30 years ago to reconsider and I am doing the same today.

City Council Presentation by Chief of Police Steve Lodge  
Binding Arbitration  
April 11, 2006

Madam Mayor, Council Members and City Manager:

Thank you for this opportunity to address you on this critical topic. To be honest with you, I am not very happy about being here tonight under these circumstances. In the 5 and 1/2 years I have served as your Police Chief, I have been very proud that each and every issue of concern raised by the Police Officers' Association has been successfully resolved by our working together.

In just about every other appearance I have made before this Council, it was to point out the excellent service our police officers provide this community every day. I have described heroic acts and many examples of our officers taking the extra step to improve the quality of life in Santa Clara.

Unfortunately, tonight, I find myself in the position of asking you NOT to support a request by the Police Officers Association. This is not to suggest that I am any less proud of the work they do, but instead, should demonstrate to you how damaging I believe Binding Arbitration will be to the City and to MY organization.

Those in support of Binding Arbitration will tell you that this is an issue of fairness. I disagree. To call this an issue of fairness is to say that the POA and the Firefighters have been treated unfairly in the past. I can think of no examples where they were treated unfairly, in fact this Council and previous Councils have been beyond fair and, in many ways, generous.

Those in support of Binding Arbitration will say that it is good to have an impartial panel decide labor disputes. I disagree. In fact, I think those who make these decisions should be extremely partial: partial to what is best for Santa Clara, including both community members AND our employees!

Today, it is the City Council that ultimately determines wages and benefits. I believe that the people in this community elected you because they trusted you to make these decisions with "what is best for Santa Clara" in mind. To hand that critical decision-making responsibility over to someone unaffiliated with, or unaccountable to, our voters, seems reckless and contrary to the faith our voters have placed in you. Similarly, I don't think the Council should direct this initiative onto the ballot under the theory that we should let the people decide. The people have already decided when they elected you and when they reaffirmed our Charter in a recent election.

As it relates to working conditions, I believe the Police Officers' Association will tell you that we have outstanding working conditions in the police department. These working conditions are generally outlined in the Memorandum of Understanding agreed to by the bargaining unit and the City. In it, the employee rights and the management rights are clearly out-lined. These sections of the MOU have helped us to be successful in establishing those great working conditions. Binding Arbitration will change how those working conditions are agreed upon.

Further, Santa Clarans elect their police chief. The City Charter gives me the responsibility to carry out the mission of the police department. Binding Arbitration changes all that. You should not consider contracting out my responsibilities for running the police department any more than you should contract out the fiscal responsibility for determining wages and benefits. I don't think an arbitrator should make decisions on how our police department is staffed, or deployed. I don't think an arbitrator should tell me how to respond to a crime problem in our community. That's MY job. If the people of Santa Clara don't like the way I'm running the Police Department, they can vote me out - they can't vote out an arbitrator.

In addition to the impact on the Charter as it relates to the Police Chief, Binding Arbitration would alter the Charter that has served this City so well for so many years. As it relates to discipline, the entire Civil Service Commission will go out of business as it relates to public safety. No longer will members of our community determine fairness in discipline, it will be determined by non-affiliated and expensive arbitrators.

Those in support of Binding Arbitration suggest that we need to examine some method to remove some of the contentiousness of negotiations. On this point, we agree. The Council has a variety of options available to try to address this issue without supporting Binding Arbitration. Some steps have already been taken. As the Manager mentioned, she and I met with the POA after the last negotiations and established some concrete steps to be taken, to help the next negotiations process go more smoothly. The negotiations that are scheduled to occur at the end of this year will be our first opportunity to use those ideas.

As the FIRE Chief mentioned, the cities that have gone to Binding Arbitration did so because they could not resolve their conflicts between the bargaining units and the city. That has not been Santa Clara's history.

I strongly believe we would be better served by continuing to look at the source of the contentiousness and resolve that, rather than considering a solution that would only cause more problems.

In conclusion, I recommend that Council note and file this request. I am concerned that if the Council directs this issue onto the ballot, it may be perceived by some as Council's endorsement of the Binding Arbitration concept. I urge the Council to re-commit to the spirit of collaboration that has served us so well and to preserve YOUR role as the ultimate authority to determine wages, benefits and working conditions.

Thank you.